

<sup>1</sup>387 F.3d 383 (4<sup>th</sup> Cir. 2004).

The Fifth Circuit in *Carranza-De Salinas v. Gonzales*<sup>2</sup> addressed the application of IIRIRA retroactively to an alien who had waited to apply for discretionary waiver of deportation under 8 U.S.C. § 1182(c) to amass additional evidence of rehabilitation and community ties after her drug conviction. The Fifth Circuit granted the petition for review and remanded the case to the Board of Immigration Appeals to allow petitioner the opportunity to make a showing of actual, subjective reliance on the continued availability of the pre-IIRIRA discretionary waiver provision.

Without deciding whether *Olatunji* necessarily dictates the outcome of this case, the interests of justice require that petitioner be given an opportunity to demonstrate actual, subjective reliance to support his argument that retroactive application of IIRIRA is impermissible here. Accordingly, this matter is set for hearing on **Monday, December 1, 2008 at 1:00 p.m.**, in Courtroom C, Fourth Floor, John H. Wood, Jr. United States Courthouse, 655 East Durango Blvd., San Antonio, Texas 78206, to allow petitioner to develop a record. The parties are directed to exchange witness and exhibit lists no later than 3 business days before the hearing.

It is so ORDERED.

**SIGNED** on November 10, 2008.



NANCY STEIN NOWAK  
UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup>477 F.3d 200, 205-06 (5th Cir. 2007).